IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 818 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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IQBAL SULEMAN ADAM KALA

Versus

ISMAIL MOHMAD BORINGWALA

Appearance:

MR VINOD H THAKORE for appellant.

NOTICE SERVED for Respondent No. 1 & 2.

MR AV TRIVEDI for Respondent No. 3 & 5.

Notice not received back from respondent No.4.

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE K.A.PUJ

Date of decision: 16/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

The appellant, original-claimant, has filed this appeal under Section 110-B of the Motor Vehicles Act, 1939, (to be referred to as "the Act" for short) claiming enhancement of compensation of Rs. 79,200/= for accidental injuries sustained by him in vehicular accident which took place on May 12, 1980 at about 3.00 A.M. on National Highway No.8, Near Village Vav, Taluka-Kamrej, District Surat, due to rash and negligent driving by the drivers of motor truck bearing No. GTS 6572 and oil tanker bearing No. GTB 5802.

2. The appellant was working as Cleaner with the opponent No.2 who is the owner of truck No. GTS 6572. On May 12, 1980 at about 3.00 A.M., the said truck loaded with pulses was proceeding from Bharuch to Jalgaon. The appellant was occupying the front seat in the said truck as a Cleaner. The said truck was being driven by the opponent No.1 in rash and negligent manner. When the said truck reached near Village Vav around 3.00 A.M. on the National Highway No.8, the oil tanker bearing No. GTB 5802 was lying in stationary condition on the left side of the road. The said tanker was parked without the parking lights in the front as well as in the rear portion of the tanker. At that time, one S.T. bus was coming from the opposite side and the opponent No.1 driver of the truck took his truck towards the left and dashed left side front cabin portion with the rear side of the oil tanker. Because of the dash the oil tanker ran off the road and fell turtle on the eastern border of the road and the truck also ran off the road and halted in the pit on the eastern side of the road. The appellant was sitting nearby the door of the truck. The door was pressed and the appellant sustained serious injuries on the left thigh. The appellant was removed to the Government Hospital, Surat where he was admitted as an indoor patient. During the treatment, the left leg of the appellant above the Knee was amputed. At the time of the accident, the appellant was aged about 20 years and as per his say he knew driving and would have become driver in future, and because of the amputation he would not be in a position to work as a driver or as a cleaner. As per the case of the appellant, because of the amputation of the leg his marriage prospects are diminished. The appellant, therefore, filed Motor Accident Claim Petition No. 352 of 1980 claiming compensation of Rs. 1,25,000/= against the driver, owner and insurance company of the motor truck bearing No. GTS 6572 and the driver, owner and insurance company of the oil tanker bearing No. GTB 5802.

3. The Insurance Company of both the vehicles, namely United India Fire & General Insurance Company, who was original-opponents No. 3 and 6 in the Claim Petition, filed their written statement at Exhibit 17, whereas opponents No. 1, 2, 3 and 5 filed their written statement at Exhibit 19. The opponents admitted the occurrance of the accident. However, both the drivers of their respective vehicles contended that they were driving their vehicles at a moderate speed and on the correct side of the road. The drivers of both the vehicles tried to throw negligence on each other.

4. The Tribunal, on pleading of the parties, framed Issues at Exhibit 28. On behalf of the appellant, Dr. Chandrahas Hariprasad Trivedi, Medical Officer, Civil Hospital, Surat, was examined at Exhibit 29. The appellant himself was examined at Exhibit 37 and the appellant produced the medical papers, copy of the Panchnama, F.I.R., Salary Certificate etc., to substantiate his case about the claim of compensation.

5. The Tribunal, on the appreciation of oral as well as documentary evidence, held that the drivers of motor truck No. GTS 6572 and oil tanker No. GTB 5802 were both negligent in driving their respective vehicles and the accident had taken place due to the rash and negligent acts. The Tribunal further held that the owners of motor truck and the oil tanker were both vicariously liable for the tortuous act committed of their drivers. It was further held that the appellant had sustained the injuries in the vehicular accident due to rash and negligent driving which took place on May 12, 1980. On the basis of the abovereferred conclusions, the Tribunal, by its judgment and award dated July 29, 1982 awarded compensation of Rs. 45,800/= in favour of the appellant to be recovered from the original-opponents No. 1 to 4, opponents No. 3 & 6 United India Fire & General Insurance Co., and opponent No.5, with interest at 6 per cent p.a. from the date of petition till realisation and proportionate costs of the petition. The appellant original-claimant, feeling dissatisfied with the award of compensation, has filed this appeal claiming enhanced compensation of Rs. 79,200/=.

6. Heard learned counsel Mr. V.H. Thakore for the appellant and learned counsel Mr. A.V. Trivedi for the respondent No.3 Insurance Company. The learned advocates of the parties have taken us through the entire record and proceedings of the appeal. Counsel for the appellant has vehemently submitted that the appellant, due to vehicular accident and the injuries sustained by him, had

lost his service and his marriage prospects are also diminished. Counsel for the appellant has placed reliance on the decision of the Supreme Court in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt.Ltd. and Others, reported in AIR 1995 S.C. 755; in Pratap Narain Singh Deo Vs. Shrinivas Sabata & Anr., reported in AIR 1976 S.C. 222; in Swatantra Kumar Vs. Qamar Ali and Others, reported in 1998 ACJ 920, in support of his submission that by passage of time the courts have increased the compensation under the heads of pain, shock and suffering and future economic loss as the rupee value has gone down. Reliance is also placed by the learned counsel for the appellant on the decision of the Division Bench of this Court in Babu Mansa Vs. Ahmedabad Municipal Corporation, reported in (1978) 19 GLR Page 492. On the other hand, learned counsel for the respondent No.3 has placed reliance on the judgment of the Supreme Court in Jai Bhagwan Vs. Laxman Singh and Others, wherein for the injuries sustained by the claimant resulting into amputation of left leg above Knee leading to permanent disability, the Supreme Court had enhanced compensation from Rs. 45,000/= to Rs. 80,000/=.

7. We have gone through the entire oral as well as documentary evidence produced by the parties before the Tribunal. The appellant at the time of the accident was d
aged above 20 years and was working as Cleaner. The cause of accidental injuries which resulted into amputation of his leg above Knee has marred his future prospects of employment as well as marriage. Bearing in mind the fact that the rupee value is going down day by day as noticed in several decisions of this High Court as well as the Supreme Court, in our opinion, looking to the injury sustained by the appellant which has resulted into amputation of left leg over the Knee joint, an amount of Rs. 75,000/= on the head of "Pain, Shock and Suffering", deserves to be awarded in view of the facts and circumstances of this case. In our opinion, the amount of Rs. 75,000/= as compensation under the head of "Pain, Shock and Suffering" and loss of amenities of life would be just and proper. The Tribunal had also awarded a sum of Rs. 18,000/= towards the future economic loss to the appellant because of the accidental injuries. In our opinion, looking to the age of the appellant, the said amount deserves to be enhanced to Rs. 36,000/=, because at the time of the accident, the appellant was serving as a Cleaner and as per the evidence led before the Tribunal, he would not be able to work as a Cleaner or as a Driver. At the time of accident, the applicant was

serving as a Cleaner, and due to amputation of leg he has lost his service and, in our opinion, he will not be able to do the same work. The appellant had deposed before the Tribunal that he wanted to become driver by passage of time as he knew driving. In view of the disablement suffered by the appellant, he has suffered monthly loss towards salary at Rs. 200/= and yearly loss would be Rs. 2,400/=. Looking to the age of the appellant, at the time of accident as he was 20 years, application of 15 multiplier would be proper in the facts and circumstances of the case and therefore the appellant would be entitled to Rs. 36,000/= on the head of "Future Economic Loss". The Tribunal had awarded Rs. 18,000/= on the head of "Future Economic Loss" which is enhanced to Rs. 36,000/=. The appellant would also be entitled to compensation of Rs. 4,000/= towards the medical expenses, attendant charges and actual loss of income. As a result of the foregoing discussions, the appellant would be entitled to compensation as under :

Rs. 75,000 : Pain, Shock and Suffering.

Rs. 36,000 : Future Economic Loss.

Rs. 04,000 : Actual Loss of Income, Medical Expenses, Attendant Charges etc.

Rs.1,15,000 : Total

The appellant would be entitled to interest on the said amount at the rate of 9 per cent per annum from the date of filing of the petition till realisation, as per the decision of the Supreme Court, in Kaushnuma Begum & Ors. Vs. New India Assurance Co.Ltd. & Ors., reported in 2001 (1) G.L.R. Page 593. The appellant shall also be entitled to proportionate costs. The respondent No.3, namely, United India Fire & General Insurance Co.Ltd., shall deposit the enhanced amount of compensation along with costs and interest in the Tribunal within eight weeks from the date of receipt of the certified copy of this Judgment. The Award of the Tribunal shall stand modified to the extent indicated above. The Appeal is partly allowed with no order as to costs.

[M.H. Kadri, J.]

rmr. [K.A. Puj, J.]